IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 144 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

MOTICHAND VIRPAL SHAH

Appearance:

1. INCOME TAX REFERENCE No. 144 of 1986
MR MANISH R BHATT for Petitioner No. 1
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 23/07/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

1. At the instance of the revenue, the following question has been referred to this Court by the Income Tax Appellate Tribunal, Ahmedabad Bench `A', for its opinion under the provisions of Section 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

"Whether on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the I.T.O. had no jurisdiction to pass an order of rectification under Section 154 read with Section 155 (7A) of the Income Tax Act, 1961 in relation to the Assessment year, 1972-73?".

2. We have heard learned advocate Shri Akil Kureshi for the applicant and learned advocate Shri Manish Kazi for the respondent-assessee.

3. Looking to the fact that provisions of Section 155 (7A) of the Act had been inserted by the Finance Act, 1978 with retrospective effect from 1st April, 1974, in our opinion, the Income Tax Officer had no jurisdiction to invoke the provisions of said Section for the assessment year 1972-73. In view of the said fact the tribunal was justified in coming to the conclusion that the Income Tax Officer had no jurisdiction to pass the order of rectification under the provisions of Section 154 read with Section 155 (7A) of the Act.

4. For the above referred reasons, we answer the question in the affirmative i.e. in favour of the assessee and against the revenue.

The reference stands disposed of accordingly with no order as to costs.

23.7.2001. (A.R. Dave, J.)

(D.A. Mehta, J.)

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